

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act of 1992:)
Rate Regulation)

Leased Commercial Access)

To: The Commission -- Mail Stop 1170

MM Docket No. 92-266

CS Docket No. 96-60

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COMMENTS OF ADIRONDACK TELEVISION CORPORATION

x. These Comments are filed by Adirondack Television Corporation in response to the Commission's "Further Notice of Proposed Rulemaking" (FNPRM) in this proceeding, FCC 96-122, released 19 March 1996. We are the operator of commercial low-power television station WNCE-LP, Glens Falls, New York. WNCE serves approximately 125,000 people in 45,000 TVHH. Of these, we serve approximately 35,000 households on cable and 10,000 households over the air. We are the only local television facility serving MSA Glens Falls.

x. We breathe a cautious sigh of relief to see the FCC's probable recognition of the gross inequities in rates, access, and program diversity in the current implementation of the leased access provisions of the 1992 Cable Act. It is regrettable but true, in many cases, that cable operators with monopoly power have been allowed to threaten, bully, ignore, or otherwise make themselves inaccessible to legitimate, independent, television enterprises that have been entitled to leased access through the intent, and by act of, Congress. And it is certainly not to the credit of the FCC that its rule-making and sluggardly enforcement has fostered and sustained this abusive state of affairs. While WNCE enjoys outstanding relations with its cable carriers under the must-carry rules, we have found this enviable circumstance to be the exception rather than the rule and that cable operators have, as often as not, considered it simply a cost of doing business to roll out expensive and intimidating legal artillery in order

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to preserve their monopoly hegemony and deprive local, well qualified, television enterprises of must-carry and/or leased channel access.

x. We presume that the FCC's statement in the FNPRM that its proposal "is not for the purpose of lowering leased access rates" is so phrased in deference to the cable carriers. We accept it in that light; otherwise, it would be patently laughable as a statement of fact -- or even opinion. The existing rate structure has not been, is not, and cannot be, either fair, affordable, or reasonable. Apparently, that has been known to everyone but the FCC so it is doubly appreciated that the FCC, however convoluted its circumlocution, finally recognizes the double-dipping formula it has allowed cable operators to employ with impunity and other computational factors that have effectively put leased access off-limits to LPTV and similar local television enterprises in defiance of Congressional intent.

x. We applaud the FCC's effort in proposing a new rate structure. We believe that the formula proposed by the FCC, if properly implemented and enforced, can provide (a) a fair and reasonable rate structure, (b) a curb to cable operator abuse of monopoly and market power, (c) sustainable balance and diversity in the exercise of First Amendment rights, (d) an enriched, pro-competitive programming mix, (e) an enlarged arena for advertisers (particularly television opportunities previously unavailable to *local* advertisers), and (f) an environment that will foster diversity and small business opportunities in television rather than rules that unnecessarily concentrate the choices, decisions, financing, and business of television in the hands of "big business," alone

x. If the FCC wishes to see marketplace forces work well, then it should act and act quickly through innovative design of rate structures to stimulate a new *industry* of leased access carriage, not unlike the leasing of lines by independent carriers in telecommunications (e.g., MCI, Sprint, Excel, Frontier). After deregulation of what was once an abusive and costly monopoly, independent carriers can now buy all the telecommunications capacity they want on new fiber optic lines for six cents a minute and less. We believe that is where the FCC should be headed in cable television through leased access rule making.

x. We are painfully aware that, through fate or legal legerdemain or legislation, our ability to serve our tri-county market through must-carry may disappear. If it does, we shall have no effective

way of serving our market except through affordable leased access. If leased access is unreasonably and unfairly priced so as to preclude our continued use of cable, then here is the programming our market will lose from WNCE:

- a. We program 15 hours per week for the disabled.
- b. We program five hours live, five hours rerun, for seniors each week.
- c. We air two hours per week of environmental programming.
- d. We air five hours per week of programming for computer users -- home computing, business computing, and users group programming.

WNCE is a part of the Albany ADI, 52nd largest market in the nation. No other television channel in this large market -- broadcast or cable -- provides the community-oriented programming above. In fact, in the case of WNCE's senior programming, it is now likely that more people watch WNCE at 11:00 a.m. daily than any other channel, broadcast or cable, as we serve this important but media-neglected segment of seniors in our communities.

- e. We air 10-20 hours per week in the performing arts. Our viewers judge our arts programming equivalent to or superior to that on PBS. This type and quality of programming is available only to a limited extent on other channels in the Albany ADI.

We do not believe that any good public or private purpose (including the interests of cable operators) would be served by putting WNCE out of business either through the recission of must-carry rules or the arbitrary and unnecessary denial of leased access channels on economic grounds.

x. WNCE's programming further serves its market by providing advertising opportunities to businesses -- opportunities that are unavailable, ineffective, or inappropriate on other channels, whether they be non-local broadcasters or national cable channels. If there is no provision for must-carry, then this economic development tool is lost to the communities we serve; and if there is no provision for affordable leased access, then creating a cost-effective *local* television/*local* advertising match is largely lost to the business base in our market, whether it be by means of WNCE or any other local television enterprises.

x. We strongly request that, in formulating new rules, the FCC make every effort to foil the disingenuous efforts of some cable operators (a) to obfuscate the process of leasing channels or to make the process overly complex, demanding and lengthy, (b) to obstruct, control, or manipulate the flow of information required for fair and honest calculations of cost-based rates, (c) to argue for and win concessions and decisions favoring the cable industry at the expense of local television enterprises and the intent of Congress with respect to providing opportunities for local and diverse programming and advertising on a monopoly medium, (d) to misuse its monopoly status and resulting marketplace power in order to enhance its own interests by the exclusion or at the expense of other legitimate television enterprises, and (e) to block the well worn pathways used by cable operators to circumvent or avoid responsiveness and FCC compliance. We believe that all of this can best be done not by fiat, by preferential treatment, or by making a policeman of the FCC, but by creating the rules and incentives that will first compel then stimulate the development of leased access capabilities, nationally. If done, the First Amendment will be safer, and television and telecommunications will be stronger, more expansive industries.

x. We strongly request that the new rules formulated be implemented immediately upon adoption. Complexity, unpredictability, instability, and non-enforcement cause existing rules to be widely regarded as a travesty by everyone but the cable operators; and their continuation, however brief, cannot be considered either useful or complimentary to the industry or to the FCC.

x. We also strongly request more responsiveness and timely action by the FCC in rule making and rule changing. Leased access is only one crucial area that hampers the intent of the Congress and the orderly development of local television and telecommunications.

x. Finally, we state strongly our appreciation of the FCC's proposals and efforts in the FNPRM. A fair and workable plan *can* result.

Respectfully submitted,



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14 May 1996